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CONSERVATION COMMISSION

MEETING MINUTES

July 22th, 2010

Beginning at 7:30 p.m.

City Hall, Room 209

Meeting called to order at 7:40 p.m.

MEMBERS PRESENT: , Chair, S. Lunin, Vice-chair & Acting Chair, D. Green, J. Hepburn, and, N. Richardson

MEMBERS ABSENT: D. Dickson, I. Wallach, R. Matthews, J. Sender (Alternate)

MEMBERS OF THE PUBLIC: See attached sign-in sheet

46 Allen Ave. –Beethoven Brook-NOI –Continued from June 24th, 2010;

Report: Your packet contains material submitted to the consultant hired by DPW, along with the consultant's report from her two (2) site visits, with attached data sheets. Her conclusion is consistent with mine: historically there was a stream between Beethoven and Allen Ave.(s) that was tributary to Cold Spring Creek (a perennial stream flowing out of Cold Spring Park, but which is now piped to Beacon St.). The area was probably also bordering vegetated wetland and flood zone, essentially an "arm" of the Cold Springs Wetland area. Sometime prior to the WPA, fill was placed as houses were developed and DPW ditched along the boundary line between the two streets. Some of the area experiences flooding, but it is considered a "B" flood zone not protected by the WPA. We cannot locate an upstream wetland with a hydrological connection to Beethoven Brook, therefore, the stream is not jurisdictional under the WPA.

Meeting: No one was present from DPW (Sr. Planner had advised J. Daghljan, who was attending another meeting, that it was not necessary). This item was moved to the end of the agenda for discussion, since other applicants were waiting. The commission members reviewed the information that there is no upstream wetland, thus the stream is non-jurisdictional under the WPA. N. Richardson raised the issue of whether on-going disturbance is preventing wetland vegetation from establishing/re-establishing, and wonders whether the area, if left alone, would re-vegetate with wetland species. Norm thinks it would. The question was asked whether the commission could ask DPW to protect the stream while working there. Members indicated if a vote were taken to make a determination on whether the stream is jurisdictional, two members would agree and two would disagree. The commission deferred a vote to the September (23rd) meeting date when more members might be present to decide on this issue.

134 Vine St., RDA – Continued from April 29th;

Meeting: Owner was not present, but has requested (via email) to continue to the September 23rd meeting.

Violation –hazardous spill at 250 Albemarle Av –Harry Gath Memorial Pool, operated by Parks & Recreation;

Report: See email report in packet. I reported the spill to DEP. There was no sign of a fish kill, and they did not assign a tracking number, but it was close. I have asked Parks and Recreation or the Building Department (which "owns" the building) to attend, and 1) explain what has been done to prevent this happening again, and 2) offer mitigation.

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Meeting: No one was present for this hearing. Approximately 150 gallons of 12% chlorine was released onto the floor of the pool building overnight. It drained into a sump pump which pumps water from ground water seepage directly under Albemarle Avenue into Cheesecake Brook.

34 Farwell St. –NOI-To remove rear house, two sheds and some pavement.

Report: To re-cap: In response to a complaint/report from City Hall staff, the Sr. Planner visited the site and found two (2) residences, front and rear, a garage, half a dozen sheds, and a considerable amount of asphalt on the site. The owner filed in 1982 for an addition to his house. The plan submitted showed a single-family residence on the lot, and the file indicates the commission determined there was a violation of grading on the bank on DCR property. An OOC was issued for a large addition. An extension was sought and granted, but the extension was never recorded. The OOC expired in 1983 with the requested addition still not built. **The commission issued an EO on 3-30-2010** to remove the rear residence (after placing erosion and sediment control) and file the necessary documents for a Certificate of Compliance for the Order of Conditions DEP NE #239-94 issued in 1982, including evidence that condition #12 was completed, as it was mitigation for a prior violation.

The owner should comply with the EO prior to the commission addressing this filing. That is, the owner should provide a plan to remove the rear residence and the “fill” on the slope under the EO. The owner should then amend the NOI just submitted to an “after-the-fact” request for permission to **keep** structures, etc., built without permits either from Inspectional Services or from Conservation. Research was performed to determine when the structures, etc. were placed on the lot. The ortho photo from 1994 shows no addition on the house, no garage and no rear house. The aerial from April 2000 shows the house, rear residence, and the garage. A building permit for roof repair was issued (for the residence) and inspected 3-29-2000. We believe that the addition to the house and the garage were constructed between the end of 1999 and April of 2000, and that the rear residence was put in it’s current location with sewer and water hook-up in the same time period. The Riverfront amendment to the WPA was passed August 7, 1996, so all of the structures described (not including various sheds) are subject to the Riverfront Act. The asphalt also appears to have been added sometime after the 1994 Ortho/aerial photo of the lot. It makes sense it would have been added in conjunction with the rear house and the garage.

The NOI before you requests an Order of Conditions to remove the rear residence, some pavement and sheds. It seems important that the owner should 1) first address the EO, then 2) revise the application to explicitly state it is an “after-the-fact” filing to keep the addition to the front residence, the garage and any sheds and pavement that the owner is requesting to keep – rather than asking the commission to issue a permit to remove unpermitted structures.

	Orig Front Res	Current	Porch	Deck	Garage	Rear Res	Asphalt	Lot	Total
Size (sf)	707	2010	352	105	471	624	7280	13,037	10,842?
Date		1999?			1999/2000?	1999/2000?		?	

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The numbers from the applicant, the assessor's office, and the City Engineering Department do not match, exactly, but the table above is an attempt to summarize. The estimated amount of paving is 7280 sf, with a request to remove ~2164 sf. It appears some asphalt would be removed and some landscaped area replaced with pavement. The applicant's plan calculations indicate the total lot coverage is ~60%, and would be ~45% after roof area/impervious surface removal.

The revised NOI should be accompanied by a new plan and information requested by Engineering. The plan submitted does not meet zoning requirements and may not be approved by BOA. It should provide an alternatives analysis, with direction from the Commission. Under 310 CMR 10.58(4) **General Performance Standard**, it states, "the applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the interests identified in M.G.L. c.131 § 40 and that the work, including proposed mitigation, will have no significant adverse impact on the riverfront area..."

Meeting: Angelo Paolini (owner), Allen R. Ciccone, Jr., Alderman, and Terrence Morris, Esq., were present to represent the project. Mr. Morris handed out a new/revised plan, "Topographic & Drain Plan," revised July 23, 2010, stamped by Frank Iebba, P.E. Mr. Morris summarized a two (2)-page letter he was submitting, that includes a proposal to address the EO, amend the NOI to indicate an "after-the-fact" filing to keep much of the impermeable surface (including roof area), and to consider the work as "redevelopment." Sr. Planner has not had time to review. Applicant agreed to continue to the September 23rd meeting. Applicant agreed to submit plan for Sr. Planner's approval for removal of rear house prior to next meeting.

Charles River Canoe & Kayak –RDA- Request to harvest water chestnuts using canoes & kayaks;

Report: Larry Smith had DOA for water chestnut removal, which expired. He wants to continue harvesting, and has advertised removal efforts will be conducted July 15th, and on later dates. Because such activities require a permit from Conservation (DEP recommends a NOI), he should advise "volunteers" that the permit he holds is only good for three (3) years, and no work can be performed after that. He also must designate a site for disposal.

Meeting: Larry Smith, co-owner, was present. He said they thought they could operate under DCR's Order of Conditions. The Sr. Planner questioned an announcement placed in the Newton Conservator's newsletter and posted at Charles River Canoe & Kayak stating that, after volunteers were "trained" they could go out on their own because it is not consistent with the regulations. Mr. Smith said they will use a portable dock and place water chestnuts in a dumpster to "de-water" prior to removal to appropriate disposal (dumpsters are not in Newton). Following discussion, the commission indicated that all parties involved (to include Charles River Watershed Association, which is organizing volunteers, and DCR, which "owns the river" and must give permission), should get together on this and submit a NOI. **Motion by D. Green to issue positive determination (as determined by staff, i.e., positive #1 and #3). Second by N. Richardson. Vote: All in favor. Motion passed.** D. Green volunteered to draft a flyer to hand out to volunteers to inform them about regulations and concerns, including proper disposal, of water chestnuts, and will forward it to Larry Smith.

32 Williams St. – New Information- New information available: owner recorded new lot during Conservation hearing, but did not inform Conservation.

Report: The original lot was recorded prior to the WPA. In the ~1940s a pipe was laid and a sewer easement was created with fill added on the river side of the lot. During the hearing, the lot which had been advertised as a 6300 sf lot, was presented as a 9500sf~ lot. The question arose as to whether Mr. Robart owned the additional land that extended beyond the prior lot lines. When consulted, the Law Department opined that Mr. Robart does own the



land. However, during the hearing the lot's dimensions were altered in the new deed to be consistent with the greater lot size and this new deed was recorded. When asked during the hearing when the lot was recorded, Mr. Robart said the lot was recorded prior to the Riverfront Act. Under regulations for the WPA, the **date the lot is recorded** is critical for determining how much of it can be developed. Within 200 foot riverfront areas, the issuing authority may allow the alteration of ... up to 10% of the riverfront area within a lot **recorded after October 6, 1997**, provided that..."

When a building permit was requested for 32 Williams St., ISD Commissioner John Lojek ruled that the request was for a new lot, and that the plan does not meet setback and other requirements. Mr. Robart appealed to ZBA, which ruled on 29th June that it is a new lot. The commission has grounds to revoke Mr. Robart's OOC and require him to re-apply. This is an action that should be done sooner rather than later, advises DEP. The Commission's authority to revoke is real but a bit vague – see MACC Handbook at 12.10.2, 310 CMR 10.05(6)j and HB Sec. 12.11. Mr. Robart can return to ZBA to request a variance, or take his case to court, or simply sell the land to someone else and let him/her deal with the issue with ISD. However, this does not address the matter for Conservation. Would the Commission like to discuss this with Mr. Robart?

Meeting: The question is whether Mr. Robart withheld pertinent information. He re-recorded the deed with increased square footage and/or altered property boundaries to reflect increased square footage. This was discovered when he came in for a building permit and Commissioner (of Inspectional Services) John Lojek determined it was a "new" lot. The commission agreed to request Mr. Robart attend the September meeting to discuss this – Sr. Planner will send letter, place a legal ad and notify abutters.

Newton Wetland Ordinance – Discussion

Report: The MACC sample by-law (found in the Environmental Handbook & on the MACC website) is in your packet as a starting point for discussion.

Meeting: Discussion postponed to next meeting.

Violations:

46 Farwell St. – Mitigation activity at Norumbega is completed. Recommend the Commission send letter to Mr. D'Agostino to this effect, and note violation is successfully mitigated.

Meeting: Motion by D. Green to lift the enforcement Order. Second by J. Hepburn. Vote: All approved. Motion passed.

34 Farwell St. Violation – see above.

15 Harwich Rd. –Mr. Spellman says he is working with a consultant to bring site into compliance;

116 Louise Rd. –Tresspass and buffer zone violation. Stephen Buchbinder wrote letter to E. McGettigan in Law Department that he is representing owners and copied Environmental Planner. Eileen McGettigan has advised him to get a court ruling on his client's claim of ~adverse possession, or to come up with a plan for them to quit using city property as their own.

Meeting: The commission directed staff to send a letter to owner to stop mowing the conservation area.

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**Certificates of Compliance**

50-52 Tanglewood – Request for full COC – all work completed.

Report: This item was not taken up last meeting – it is ready for approval.

Meeting: Motion by D. Green to issue COC. Second by J. Hepburn. Vote: All approved. Motion passed.

111 Upland Av.-239-451 – Expired 11-7-2005. Plan and letter certifying work.

Report: Issuance of COC recommended with on-going condition #28.

Meeting: Motion by N. Richardson to issue COC with an on-going condition, #28. Second by D. Green.

Vote: All approved. Motion passed.

1897 Washington St. Woodland Golf Course – Expired 4-9-1983, but work completed after OOC expired.

Report: Plan and letter certifying work. Board Order issued for work, and Certificate of Occupancy issued by ISD. Site visit conducted and all is in order. Recommend approval.

Meeting: Kelly Killeen of Coler & Colantonio and David Garfinkle were present to represent the applicant.

Motion by N. Richardson to issue COC. Second by D. Green. Vote: All approved. Motion passed.

2345 Commonwealth Av. Marriott Hotel- OOC 239-262 expired in 1994. Gazebo in flood zone with compensatory flood storage.

Report: Have received as-built plan with certification that gazebo slightly lower than planned, but greater-than-adequate compensatory flood storage was completed. Recommend approval.

Meeting: Christopher Novak and Matt Varrell, VHB, present to represent the project. **Motion by D. Green to issue COC. Second by N. Richardson. Vote: All approved. Motion passed.**

2345 Commonwealth Av. Marriott Hotel-OOO 239-578 expired

Meeting: Christopher Novak and Matt Varrell, VHB, present to represent the project. Certification letter submitted initially listed a number of things yet to be done. A single catch basin was installed instead of a double, and a non-native Viburnum was planted instead of a native. New letter from engineer submitted today certifying all as in Order of Conditions except catch basin. **Motion by D. Green to issue Certificate, to be held until Sr. Planner's can do return site visit and is satisfied conditions have been met. Second by J. Hepburn. Vote: All in favor. Motion passed.**

2345 Commonwealth Av. Marriott Hotel-OOO 239-603; as-built plan and letter certifying work.

Report: Letter certifying work also notes work not completed, including mitigation at outfall. I do not recommend COC at this time. Applicant may offer surety for performance.

Meeting: Christopher Novak and Matt Varrell, VHB, present for project. They reported that all the plantings are in, although some only went in in the past day or two. Planner reported dumping of grass clippings by mitigation area and in Norumbega Park Conservation Area by Marriott landscaper. **Motion by J. Hepburn to not issue Certificate of Compliance at this time. D. Green seconded. Vote: All Approved. Motion passed.**

126 Albemarle Rd.-Plan and letter certifying work, no site visit yet conducted.

Meeting: Motion by N. Richardson to issue an Order of Conditions subject to Sr. Planner's receipt and approval of an original certification letter signed by engineer/surveyor for project.

Announcements & General Business:**Conservation Commission**

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June 24th, 2010 Meeting Minutes for approval;

Meeting: Motion by N. Richardson to approve June 24th minutes. Second by J. Hepburn. Vote: S. Lunin, N. Richardson, and J. Hepburn voted “aye.” D. Green abstained (he was not present for that meeting). Motion passed.

Report on Management Plan Meeting – held to next meeting.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner

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